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Arbitrators are "employees" and protected against discrimination, Court of Appeal says

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Arbitrators are covered by discrimination law because their appointment to assist in disputes constitutes a contract of employment, the Court of Appeal ruled this week.

In a ruling with far-reaching implications, senior judges ruled that to object to an arbitrator on the grounds of race or religion was illegal.

The decision came in a case called *Haswani v Jivraj* in which the London law firm, Zaiwalla & Co., had appointed as an arbitrator a former High Court judge, Sir Anthony Colman, who is Jewish.

The other side in the case, a multi-million dollar dispute concerning a joint venture over a hotel chain in Canada, objected to Sir Anthony's appointment, on the ground that he was not an Ismaili Muslim, as both sides to the dispute themselves were.

The termination of the joint venture between the parties required the appointment of arbitrators by both parties to help in dividing the assets.

The legal issue was whether commercial arbitrators were covered by the Employment Equality (Religion or Belief) Regulations 2003 and the EU Employment Directive as well as the Human Rights Act.

The High Court initially ruled that the employment regulations did not apply to the arbitrator in this case. But the Court of Appeal this week disagreed, finding that the regulations extended to the selection, engagement and appointment of arbitrators; and that the relationship between arbitrators and the parties were governed by contract.

Sarosh Zaiwalla said: "The result of this judgment means that no private individual in the UK can discriminate against any other independent contractor whether solicitor, arbitrator or plumber, on grounds of sex, age, disability or religion, even if the appointment is made entirely private. That is the direct result of this case."

The ruling meant that contractors of any description could now be considered "employees" and were protected by the employment equality regulations, he said.